

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

LUZ YESENIA PONCE,

Plaintiff,

v.

ADVENTISTS MEDICAL CENTER –  
HANFORD, et al.,

Defendants.

No. 1:20-cv-00261-NONE-EPG

ORDER GRANTING UNITED STATES’  
UNOPPOSED MOTION TO DISMISS AND  
REMANDING TO STATE COURT

(Doc. No. 6)

Plaintiff Luz Yesenia Ponce filed this action on July 23, 2019 in Kings County Superior Court. (Doc. No. 1 at 5.) Defendant United States of America timely removed. (*See id.* at 1–3.) The United States substituted in this action in the place of defendant David Cryns, D.O., pursuant to 42 U.S.C. § 233(c) because defendant Cryns was a deemed employee of the Public Health Service and was acting within the scope of such employment at the time of the incidents giving rise to the action. (Doc. No. 2 at 2.) In this action, plaintiff alleges medical malpractice against defendants in connection with a sterilization procedure. (Doc. No. 1 at 6–9.)

On February 26, 2020, the United States moved to dismiss the complaint under Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction. (Doc. No. 6 at 2–3.) The United States argues that plaintiff has not exhausted an administrative tort claim to the United States Department of Health and Human Services. (*Id.* at 3.) Therefore, the United States

1 requests that the court dismiss plaintiff's claims against the United States without prejudice and  
2 remand plaintiff's claims against Adventist Medical Center – Hanford to state court. (*Id.*) On  
3 March 17, 2020, plaintiff filed a notice of non-opposition to the granting of the United States'  
4 motion to dismiss. (Doc. No. 9.)

5 Accordingly, the court will dismiss the complaint based on plaintiff's statement of non-  
6 opposition to the pending motion to dismiss. *See Way v. JPMorgan Chase Bank, N.A.*, No. 2:16-  
7 cv-02244-TLN-KJN, 2019 WL 1405599, \*1 (E.D. Cal. Mar. 28, 2019) (granting unopposed  
8 motions to dismiss where plaintiff filed statement of non-opposition). This dismissal is without  
9 prejudice.

### 10 CONCLUSION

11 For the reasons set forth above, defendant's motion to dismiss (Doc. No. 6) is GRANTED  
12 and the claims against the United States are DISMISSED WITHOUT PREJUDICE. This action  
13 is hereby remanded to the Kings County Superior Court.

14 IT IS SO ORDERED.

15 Dated: April 21, 2020

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UNITED STATES DISTRICT JUDGE